Supreme Court, U.S.
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NO. 87 - 1138

In the Supreme Court of the United States

OCTOBER TERM, 1987

AMF TUBOSCOPE, INC.,
Petitioner

versus

HOUSTON OIL AND MINERALS CORP.,
Respondent,

AMERICAN INTERNATIONAL TOOL COMPANY,
Respondent,

AND

OIL TOOL MACHINE,
Respondent.

OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether state law was properly applied pursuant to the jurisdictional grant of the Outer-Continental Shelf Lands Act, because of the absence of any maritime nexus.

LIST OF INTERESTED PERSONS

1. Houston Oil and Minerals Corporation - Plaintiff/Respondent

2. Tenneco, Inc. - the parent company of Houston Oil and Minerals Corporation

3. American International Tool Company - Defendant/Cross-Claim Plaintiff/ Respondent

4. AMF Tuboscope, Inc. - Defendant/Cross-Claim Defendant/ Petitioner

5. AMF, Inc. - the parent company of AMF Tuboscope, Inc.

6. Oil Tool Machine - Defendant/ Respondent

7. Gibraltar Insurance Company - Defendant/Respondent

8. Pinetop Insurance Company - Defendant/Respondent

9. Marine Drilling Company - Third Party Defendant/Respondent

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respondent, Houston Oil and Minerals Corp., respectfully prays that the Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Fifth Circuit entered September 24, 1987, and the denial of the Petitions for Panel Rehearing and/or

Rehearing En Banc entered on October 30, 1987, be denied.

OPINIONS BELOW

The Court of Appeals rendered its opinion on September 24, 1987. This opinion is reported at 827 F.2d 1049.

The District Court issued its "Findings of Fact and Conclusions of Law" on February 19, 1986. An amendment thereto was issued on March 3, 1986. Neither of these opinions is reported.

STATEMENT OF JURISDICTION

The jurisdiction of this Court has been invoked pursuant to Title 28 U.S.C.A 1254(1)

STATUTORY PROVISIONS INVOLVED

1. 46 U.S.C.A § 740 (ADMIRALTY EXTENSION ACT) Extension of admiralty and maritime jurisdiction; libel in rem or

in personam; exclusive remedy; waiting period.

The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land.

In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after June 19, 1948, and for all causes of

action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

* * * * * * *

2. 43 U.S.C.A § 1333
(OUTER CONTINENTAL SHELF LANDS ACT):

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction;

(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the Outer Continental Shelf and to all artificial islands, and

11 installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the Outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State. Provided, however, That mineral leases on the Outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the

United States for that portion of the subsoil and seabed of the Outer Continental Shelf, artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the Outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the Outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting any outstanding international boundary dispute respecting the Outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the Outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Longshore and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the outer Continental Shelf, compensation shall be

payable under the provisions of the Longshore and Harbor Workers' Compensation Act (33 U.S.C.A. 901 et seq.). For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section-

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

STATEMENT OF THE CASE

Houston Oil and Minerals Corp. (HOMC) as co-owner and operator of an oil and gas lease on the outer Continental Shelf in Vermilion Block 75, offshore Louisiana, filed suit pursuant to the jurisdictional grant of the Outer Continental Shelf Lands Act for damages it sustained when a mud saver sub being used in the drilling of a well on the aforesaid lease by a jack-up drilling vessel, broke in two, causing in excess of fourteen thousand feet of drill pipe to drop to the bottom of the hole. Fishing operations were unsuccessful and the well had to be redrilled at a cost to HOMC in excess of one million dollars.

Named as defendants in the suit were American International Tool (AITCO), the owner and manufacturer of the mud saver sub and its insurers Gibraltar and Pine Top; Oil Tool Machine (OTM), the machine shop

that fabricated the housing of the sub; Metal X, the supplier of the bar stock from which the sub was fabricated; Armco, the manufacturer of the steel used in the sub; and AMF Tuboscope, the company which performed a magnetic particle inspection on the sub. Named third party defendant in the suit was the drilling contractor, Marine Drilling Company. The various defendants filed reciprocal cross claims against each other.

Judge Daniel H. Thomas, of Mobile, Alabama, presided over the three day trial which began September 9, 1985 and at the close of plaintiff's case granted a directed verdict in favor of defendants ARMCO and Metal X. The remaining defendants dismissed their cross claims against these two (2) parties.

A mud saver sub is a three foot in length, solid steel tubular tool used in

the drill string between the kelly (the flat sided portion of pipe which is turned by the rotary table) and the drill pipe below (the drill stem).

The purpose of the sub is two-fold--to guard and protect the pin-end threads of the kelly (which would otherwise be the most frequently broken connection) from excessive wear and tear and by means of an interchangeable internal one-way spring valve, to prevent the column of mud in the tube of the kelly from falling to the drill floor once a connection is broken to add or remove a joint of drill pipe from the remainder of the drill stem.

A mud saver sub has a six inch in length by one-eighth inch deep recessed area cut out near the center of the sub, around its entire external circumference, where a rubber doughnut cushion fits to

protect the sub from hitting the side of the casing inside the well bore.

The recessed area is machined by cutting a curve or fillet radius into the steel at the upper and lower limits of the area to be recessed, causing a gradual reduction in the outer diameter of the sub by one eighth inch. The steel on the outside of the sub between these two curves or fillet radii is then reduced by one eighth inch as well.

A fillet radius must be cut in a smooth continuous curve to eliminate a concentration of stress at that point.

In the instant case, two expert metallurgists determined that the curve of one of the fillet radii was not smooth, but contained a notch. During normal use, the notch subjected this fillet radius to abnormal stresses, causing a crack to form, which eventually propagated across the entire cross-section of the sub, causing it

to break in two. The drill pipe connected to the lower portion of the sub then fell some three hundred feet to the bottom of the hole.

On the basis of this evidence, the District Court, and the Court of Appeals found OTM negligent for the manner in which the housing of sub was machined.

Prior to its use offshore, the sub was subjected to a magnetic particle inspection by AMF Tuboscope and was passed for use, despite reports by the inspector of a machining groove at one of the fillet radii. After the pieces of the broken sub were retrieved, it was determined that it broke across the same area where the inspector had noted the machining groove.

Again, based on expert testimony presented at the trial, the District Court held and the Court of Appeals affirmed that the inspection company, AMF Tuboscope, was

negligent for having passed the tool for use.

AITCO was found to be the manufacturer of the sub by the District Court, and thus liable unto the plaintiff under Louisiana law of strict liability.

AITCO was held jointly and severally liable unto the plaintiff along with OTM and AMF Tuboscope.

The Court of Appeals reversed this finding, holding that AITCO was entitled to indemnity from the two negligent parties. Neither the District Court, nor the Court of Appeals found any independent basis of negligence on the part of AITCO.

Numerous appeals and cross appeals were taken by the parties. The issue of jurisdiction was first raised by AMF Tuboscope in response to a cross appeal, and is now the subject of its petition for writ of certiorari.

SUMMARY OF ARGUMENT

The Fifth Circuit Court of Appeals properly applied Louisiana law as made applicable by the Outer Continental Shelf Lands Act because no maritime nexus is present upon which admiralty jurisdiction must be based.

ARGUMENT

The petition for writ of cetiorari should be denied. Based on the decisions of this Honorable Court in Executive Jet Aviation Inc. vs. City of Cleveland, 409 U.S. 249, 93 S.Ct. 493, 34 L. Ed.2d 454 (1972); Herb's Welding, Inc. vs. Gray, 470 U.S. 414, 105 S.Ct. 1421; 84 L. Ed.2d 406 (1985); and Foremost Insurance Co. vs. Richardson, 457 U.S. 668, 102 S.Ct. 2654, 73 L. Ed.2d 300 (1982), it is abundantly clear there is no maritime nexus which is necessary to confer admiralty jurisdiction,

as is suggested by Petitioner. Alternatively, this matter does not warrant review because, even if maritime law were to be applied, the result, with the exception of the matter of interest, would be the same.

Suits in admiralty must satisfy two jurisdictional requirements:

(1) The traditional "locality" rule--the wrong must have occurred on the high seas or navigable waters; and

(2) There must be a "maritime nexus"--the wrong must bear a"significant relationship to traditional maritime activity." Executive Ject Aviation Inc. vs. City of Cleveland, supra.

In the case now before the Court, it is clear that the locality rule has been satisfied, but it is equally clear that the maritime nexus has not. A maritime nexus has been equated with

"traditional maritime activity," Executive Jet, supra and "maritime commerce," Foremost, supra.

There are some activities which this Court has recognized as clearly "maritime," such as the need for uniform rules of navigation for vessels, Foremost supra; loading and unloading of vessels, Herb's Welding, supra; and interruption of a voyage due to faulty engine design, East River S. S. Corp. vs. Transamerica Delaval, 476 U.S. ___, 106 S.Ct. 2295, 90 L. Ed.2d 865 (1986).

Likewise, there are activities this Court has held to be clearly non-maritime, such as aviation, Executive Jet, supra, and offshore drilling for oil and gas, Herb's Welding, supra.

The case now before the court involves offshore drilling for oil and gas, albeit, on a jack-up drilling vessel rather than a

fixed platform, as was the case in Herb's Welding.

The accident which gave rise to this suit, the parting of a tool used in the drilling of the well, a mud saver sub, could just as easily have occurred on land. It was for this very reason that the Fifth Circuit in its earlier decision in Sohyde Drilling and Marine Co. vs. Coastal States Gas Producing Co., 644 F.2d 1132 (5th Cir. 1981) held that Louisiana law, and not maritime law should apply to a claim for property damages resulting from the blowout aboard a submersible drilling barge located in Louisiana territorial water.

The Fifth Circuit in that case considered several factors to determine if the requisite maritime relationship existed, but found that the blowout could have easily have occurred on land and then addressing the issue of the "vessel" held:

"Although Sohyde 28 may have had some maritime character at the time of the blowout--in the sense that it floated in and presumably would float out--it clearly was not substantial." 644 F.2d at p. 1137.

This Honorable Court, in discussing the jurisdictional limits of the Longshore and Harbor workers' Compensation Act, 33 U.S.C. § 901 et seq. and the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333, has made it abundantly clear, that absent legislative intent and a clear congressional mandate, it is inappropriate to extend maritime jurisdiction.

Petitioner points to the dichotomy between the treatment of personal injury cases and property damages cases which occur on drilling vessels. Here, there is no absence of legislative intent, but a clear Congressional mandate, the Jones Act,

46 U.S.C. § 688 et seq., which clearly extends jurisdiction to claims for personal injury to members of the crew of a vessel.

The Fifth Circuit took cognizance of the different treatment of a vessel in terms of personal injury versus property damage claims in the Sohyde case:

> "However, we are not convinced that the term "vessel" for Jones Act purposes, which is subject to liberal construction consistent with the purposes of the Act, is necessarily a vessel for other purposes as well." 644 F.2d at p. 1137.

Unlike the area of personal injury, where Congress has spoken its clear intent by means of the Jones Act, the Longshore and Harbor workers' Compensation Act, and the Death on the High Seas Act, there has been no clear Congressional mandate on the issue of property damage claims, and until such time as Congress chooses to do so, it is appropriate that the jurisdictional constraints of locality and maritime nexus

as set forth in Executive Jet, be followed.

Respondent takes issue with the suggestion of the panel of judges in the Fifth Circuit in the instant case that because the tort sued upon herein had the potential to disrupt maritime commerce, the activity involved must therefore be maritime, likening this case the the facts in Foremost where two pleasure boats collided. Houston Oil and Minerals Corp. vs. American International Tool Company, et al, 827 F.2d 1049,1054 (5th Cir. 1987).

The parting of the mud saver sub had nothing to do with the navigation or loading and unloading of the jack up drilling vessel. The sub was used exclusively in the drilling of the well.

Comparing the potential hazard to maritime commerce posed by the parting of the mud server sub to those posed by the

sinking of the plane in navigable waters in Executive Jet, which this Court found to be insufficient in an of itself to confer admiralty jurisdiction, it is obvious that not only were the hazards less, indeed the hazards were non-existent.

As stated by this Honorable Court in footnote 5 of its opinion in Foremost Insurance Co. vs. Richardson, supra,

> "Not every accident in navigable waters that might disrupt commerce will support federal admiralty jurisdiction." 457 U.S. at p. 675.

Next addressing Petitioner's contention that the Admiralty Extension Act, 46 U.S.C. § 740, confers admiralty jurisdiction in this case, we need only look to the legislative intent of the Act, as discussed in the Fifth Circuit's decision in Sohyde Drilling and Marine Co. vs. Coastal States Gas Producing Co., supra, to find that the Act was not intended to create new causes of action,

but "to correct the inequities, and anomalies, arising under then existing law which extended admiralty jurisdiction only to those cases in which injury was actually done or consumated upon navigable waters. Sohyde at p. 1135. Thus, the Act dealt with anomalies with regard to "locality" only, leaving intact the additional requirement of Executive Jet, of a maritime relationship. Sohyde, at p. 1136. Had Congress desired to delete from the Act the requirement of a "maritime relationship," surely Congress would have done so.

Finally, Petitioner argues that a different result on the issue of liability will arise if admiralty jurisdiction attaches. Respondent concedes that the rate of interest to be applied to the judgment would be different and perhaps the award of prejudgment interest could be

reversed, but the ultimate responsibility for the damages would not change at all.

The District Court held AITCO, OTM and AMF Tuboscope jointly and severally liable under Louisiana law for the following reasons:

> AITCO, as the manufacturer of mud saver sub under Louisiana law of strict liability;
>
> Oil Tool Machine, for improperly machining the housing of the sub; and
>
> AMF Tuboscope, for improperly inspecting the sub.

The Fifth Circuit in its decision upheld these factual findings but determined that AITCO was entitled to complete indemnification from OTM and AMF Tuboscope, because AITCO's liablity was only vicarious.

While it is true that maritime law applies the principles of pure comparative negligence, United States vs. Reliable Transfer Co., 421 U.S. 397, 95 S.Ct. 1708,

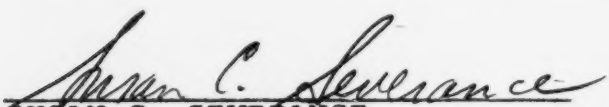
44 L. Ed.2d 251 (1975) it is equally true that the same body of law entitles a non-negligent or constructively liable tortfeasor to indemnity from a co-debtor guilty of actual fault. Marathon Pipe Line Company vs. Drilling Rig Rowan/Odessa, et al, 761 F.2d 229 (5th Cir. 1985)

CONCLUSION

This Court has spoken: for there to be admiralty jurisdiction, both locality and maritime nexus must be present. Absent Congressional intent, otherwise, the decision in this case should not be disturbed. The petition for writ of certiorari should be denied.

Respectfully Submitted,

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